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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,274	03/10/2004	David Kirchhoff	03968-P0001E	2954
24126 7590 11/25/2008 ST. ONGE STEWARD JOHNSTON & REENS, LLC 986 BEDFORD STREET STAMFORD, CT 06905-5619				
EXAMINER				
BROOKS, MATTHEW L.				
ART UNIT		PAPER NUMBER		
3629				
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11/25/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/797,274

**Applicant(s)**

KIRCHHOFF ET AL.

**Examiner**

MATTHEW L. BROOKS

**Art Unit**

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 1-9 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse by way of telephone by Mr. Todd Oberdick at telephone number 203-324-6155 on 11/20/2008 and elected to pursue claims 10-16.
2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-9, drawn to a method for "sharing recipes of a user", classified in class 705, subclass 1.
  - II. Claims 10-16, drawn to a system for generating and displaying a single, composite nutritional indicator for a serving of a multiple ingredient recipe, may be classified in class 705, subclass 2.
3. In making a decision as to whether a Restriction is proper Examiner is to compare the claimed subject matter. MPEP 806.01 During the comparison the claims are considered to be in proper form and patentable/novel. Thus, Examiner must show the inventions are "independent" and/or "distinct". The inventions in this case are distinct.

Inventions Group I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for

patentability, and (2) that the subcombination has utility by itself or in other combinations. (MPEP 806.05(c)). In the instant case the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a "processor for calculating the single, composite nutritional indicator for a serving of the recipe from the user information" and the subcombination has a separate utility such as a consumer posting any information on a website like that of who is on their fantasy team

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

### ***Claim Objections***

4. Claim 11 is objected to because of the following informalities: The "wherein" clause fails to add any patentable weight. Appropriate correction is required.

5. Claim 12 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. The claim limitation 10 (c) in the processor already is operable to compute composite nutritional indicator.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 13 recites the limitation "the nutritional indicators" and up till then there are none. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims **10-16** are rejected under 35 U.S.C. 102(b) as being anticipated by US 6356,940 (Short).
10. With respect to claim 10 : Short teaches a system for generating and displaying a single, composite nutritional indicator for a serving of a multiple ingredient recipe, the recipe being supplied by the user of the system, said system comprising:
- a user interface for receiving from the user the identity and amount of the ingredients of the recipe and serving size information (Fig 1, 150);

a database containing nutritional data for common recipe ingredients including the recipe ingredients identified by the user (Fig 2);

a processor for calculating the single, composite nutritional indicator for a serving of the recipe from the user information and the database data (Fig 2, 220 and Fig 3, 330); and

a display field for displaying the calculated composite nutritional indicator for a serving of the recipe (Fig 3, 350).

11. With respect to **claim 11** : Short teaches wherein the calculation of the composite nutritional indicator takes into account plural nutritional parameters for each ingredient and wherein the composite nutritional indicator is utilized in planning daily food intake to achieve weight control (C6, 50-65).

12. With respect to **claim 12** : Short teaches further comprising a computational software element operable to compute the single, composite nutritional indicator(Fig 2, 220 and Fig 3, 330).

13. With respect to **claim 13** : Short teaches wherein the user interface further includes individual nutritional indicator display fields operable to display the nutritional indicators associated with each ingredient of the recipe (C6, 1-15 and C7, 10-20).

14. With respect to **claim 14** : Short teaches wherein the user interface further includes selectable indicia operable to be selected to include or remove the ingredients of the recipe (C2, 55-61 "make suggestion" then able to replace or deny).

15. With respect to **claim 15** : Short teaches a user interface includes a selectable list of the ingredients associated with at least one of a food manufacturer and a restaurant (C2, 20 -30 and C8).
16. With respect to **claim 16** : Short teaches further comprising a second database operable to maintain a history of consumption of the multiple ingredient recipes and associated single, composite nutritional indicators (C6, 1-15 and C7, 10-20).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW L. BROOKS whose telephone number is (571)272-8112. The examiner can normally be reached on Monday - Friday; 8 AM - 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MLB  
11/21/08

/John G. Weiss/  
Supervisory Patent Examiner, Art Unit 3629